FEDERATION REPORTS.

PUBLIC PROSECUTOR v. MARDAI.

[App. Crim. Juris. (Spenser-Wilkinson, J.) January 18, 1950]

[K. L. — Criminal Appeal No. 44 of 1949]

Penal Code, s. 354 — Sexual offences — Corroboration of complainant's evidence — Criminal Procedure Code, s. 173A — Magistrate's discretion to discharge.

While there is no law in this country that in sexual offences the evidence of the complainant must be corroborated; nevertheless, as a matter of common sense, it will be unsafe to convict unless either the evidence of the complainant is unusually convincing or there is some corroboration of the complainant's story. It would be sufficient if that corroboration consisted only of a subsequent complaint by the complainant herself provided that the statement implicated the accused and was made at the first reasonable opportunity after the commission of the offence.

MAGISTRATE'S APPEAL.

Tungku Abdul Rahman (D. P. P.) for the Appellant.

Respondent in person

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Spenser-Wilkinson, J. : — In this case the Deputy Public Prosecutor appealed against the Order of the learned Magistrate binding over the accused in the sum of $100 to be of good behaviour for three months with one surety, upon a charge under section 354 of the Penal Code.

The facts alleged were that the accused, who lived in the next room to the complainant, an unmarried woman, climbed over the partition between their rooms during the night and having first embraced the complainant threatened to stab her with a knife when she started shouting. The complainant thereupon continued to shout with the result that the accused then scaled the partition wall and went back into his room. At the conclusion of the case the learned Magistrate, having found that the charge was proved, without proceeding to record a conviction, discharged the offender under the bond just mentioned under the provisions of section 173A of the Criminal Procedure Code.

The contention of the Deputy Public Prosecutor was that, where a person is found guilty of an offence under this section, it is necessary, for the protection of women and girls, that a severe sentence should be passed. I am not prepared to accept this as a general statement but I think it would be correct to say that if the whole of the evidence of the complainant in this case were true then it would not appear to have been a case in which the exercise of the discretion conferred by section 173A of the Criminal Procedure Code was proper.

From the wording of the last paragraph of his grounds of decision, however, in which the Magistrate points out that it was a case where there was only the complainant's evidence against that of the accused and that there was no corroboration of the complainant's evidence it appeared to me that the Magistrate took the course he did really because he was in some doubt as to the guilt of the accused or at least to the extent to which he had committed all the acts complained of. This was wrong. If the Magistrate had doubts as to whether it was the accused who went into the girl's room or as to what actually happened there when he went into that room, that would have been a reason for giving the accused the benefit of the doubt and acquitting him or for altering the charge; but it could not be a good reason for exercising his discretion under section 173A.

Whilst there is no rule of law in this country that in sexual offences the evidence of the complainant must be corroborated; nevertheless it appears to me, as a matter of common sense, to be unsafe to convict in cases of this kind unless either the evidence of the complainant is unusually convincing or there is some corroboration of the complainant's story. It would be sufficient, in my view, if that corroboration consisted only of a subsequent complaint by the complainant herself provided that the statement implicated the accused and was made at the first reasonable opportunity after the commission of the offence. In the present case, although the girl immediately complained that she had been molested, according to the evidence she did not name the accused as her assailant to any one. On the contrary she is alleged to have said that "someone" had molested her, thereby suggesting that she did not know who it was. Suspicion appears to have fallen on the accused merely because, when the other labourers came along in answer to the girl's cries the accused remained in his room until he was awakened and called out by his mother.

In addition to the lack of corroboration of the complainant's story there is also the fact that in the room with her were her two younger brothers aged five and seven. Neither of these two children was called as a witness nor was any evidence given to suggest that they remained asleep throughout the proceedings or

otherwise to explain why they were not called. Finally there is a conflict of evidence between the complainant herself and the third witness with regard to the lamp. Complainant's story was that she was able to recognise the accused because the lamp in her room was still burning, whereas the third witness states that when he went to the complainant's room only a few minutes later there was no lamp on in the room.

Taking all these matters into consideration and the fact that the Magistrate himself appears to have had some doubt in the matter I came to the conclusion that this was a case in which it was unsafe to convict and I decided to act in revision and to reverse the learned Magistrate's Order. The accused was accordingly acquitted.

Accused acquitted

HAJI MOHAMED BIN HAJI BAHAUDIN v. RADIAH BINTI ZAINUDIN.

[Orig. Civ. Juris. (Thomson, J.), January 25, 1950]

[Ipoh — Bankruptcy No. 25 of 1949]

Bankruptcy Notice — Bankruptcy Enactment, s. 4(i)(i) — Whether Bankruptcy Notice can be founded on Kathi's order for maintenance — Courts Enactment (Cap. 2), s. 66.

A Bankruptcy Notice under s. 4 (i) (i) of the Bankruptcy Enactment (Cap. 55) cannot be founded on an unsatisfied order for maintenance made by a Court of a Kathi.

Case referred to :—

(1) *In re a Bankruptcy Notice* (1907) 1 K.B. 482.

APPLICATION IN BANKRUPTCY.

Parties in person.

Thomson, J. : — This is an application to set aside a Bankruptcy Notice which was issued on two unsatisfied orders for maintenance made by the Chief Kathi for Perak. The only question that arises is whether a bankruptcy notice can be founded on such an order.

That question is to be decided on a construction of section 4 (i) (i) of the Bankruptcy Enactment and section 66 of Chapter 2 of the Laws of the Federated Malay States which is the only existing provision for the enforcement of orders made by Kathis' Courts and which reads as follows :—

"66. — In the event of any lawful order made by a Court of a Kathi . . . not being obeyed, such Court may report the matter, with a copy of all proceedings therein, to a Court of a Magistrate of the First Class within the same district and thereupon it shall be the duty of such last-mentioned Court either to enforce such order as though it were an order made by itself or to send it to another Court for execution."

In my opinion the point can be most satisfactorily disposed of by reference to certain observations by Fletcher Moulton, L.J., in the case of *In re a Bankruptcy Notice*[1]. The question in issue in that case was whether a Bankruptcy Notice could be founded on an arbitration award. His Lordship was of the opinion that it could not and in the course of his judgment to that effect he said :—

"The powers of the Court as to giving effect to such an award in such an arbitration are defined by s. 12 of the Arbitration Act, 1889. That section provides that "an award on a submission may by leave of the Court or a judge be enforced in the same manner as a judgment or order to the same effect." But it gives no power to turn such an award into a judgment. It gives to the award the same status as a judgment for the purpose of enforcement, but it leaves it what it was before, viz., an award. . . . . The only other question is as to whether the procedure under s. 4, sub-s. 1 (g), of the Bankruptcy Act, 1883, is an enforcement within the meaning of s. 12 of the Arbitration Act, 1889. In my judgment an application for a bankruptcy notice is not a method of enforcing a judgment. It is the commencement of proceedings of far wider effect, and is not intended to be included in the words of s. 12 of the Arbitration Act."

So far as the question before me here is concerned, I can see no material difference either between section 12 of the Arbitration Act and section 66 of Chapter 2, or between section 4 (i) (g) of the Bankruptcy Act, 1883, and section 4 (i) (i) of the local Bankruptcy Enactment. By parity of reasoning with the passage which has been quoted, I am compelled to the conclusion that section 66 gives the Kathi's Court order the status of a Magistrate's Court for the purpose of enforcement but it leaves it what it was before, that is a Kathi's Court order, and that procedure under section 4 (i) (i) of the Bankruptcy Enactment is not an enforcement under section 66.

The application is accordingly allowed and the bankruptcy notice to which it relates set aside.

Notice set aside.

IN RE LAI TENG FONG DECEASED; YAP KWEE YING v. LAI KIM FOH.

[Orig. Civ. Juris. (Laville, J.) December 3, 1949]

[J.B. — Probate Suite No. 1 of 1948]

Marriage — Chinese marriage — Evidence of cohabitation and common repute.

On the 15th October, 1947, Yap Kwee Ying the petitioner herein filed a petition to administer the estate of Lai Teng Fong deceased, who was killed by the Japanese on 24th February, 1942. On the same date, one Lai Kim Foh entered a caveat to the petition and claimed to have